

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LASALLE HERRMANN,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

1:20-CV-3995 (LGS)

1:16-CR-0814 (LGS)

ORDER DENYING REQUEST FOR PRO  
BONO COUNSEL

LORNA G. SCHOFIELD, United States District Judge:

Movant requests the Court to appoint counsel on his behalf. For the following reasons, Movant's application is denied

### LEGAL STANDARD

The *in forma pauperis* statute provides that the courts “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). Unlike in criminal cases, in civil cases, there is no requirement that courts supply indigent litigants with counsel. *Hodge v. Police Officers*, 802 F.2d 58, 60 (2d Cir. 1986). Instead, the courts have “broad discretion” when deciding whether to grant an indigent litigant’s request for *pro bono* representation. *Id.* Even if a court does believe that a litigant should have a free lawyer, under the *in forma pauperis* statute, a court has no authority to “appoint” counsel, but instead, may only “request” that an attorney volunteer to represent a litigant. *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 301–310 (1989). Moreover, courts do not have funds to pay counsel in civil matters. Courts must therefore grant applications for *pro bono* counsel sparingly, and with reference to public benefit, in order to preserve the “precious commodity” of volunteer-lawyer time for those litigants whose causes are truly deserving. *Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 172-73 (2d Cir. 1989).

In *Hodge*, the Second Circuit set forth the factors a court should consider in deciding whether to grant an indigent litigant's request for *pro bono* counsel. 802 F.2d at 61-62. Of course, the litigant must first demonstrate that he or she is indigent, for example, by successfully applying for leave to proceed *in forma pauperis*. The court must then consider whether the litigant's claim "seems likely to be of substance" – "a requirement that must be taken seriously." *Id.* at 60–61. If these threshold requirements are met, the court must next consider such factors as:

the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues[,] and any special reason in that case why appointment of counsel would be more likely to lead to a just determination.

*Id.*; see also *Cooper*, 877 F.2d at 172 (listing factors courts should consider, including litigant's efforts to obtain counsel). In considering these factors, district courts should neither apply bright-line rules nor automatically deny the request for counsel until the application has survived a dispositive motion. See *Hendricks v. Coughlin*, 114 F.3d 390, 392-93 (2d Cir. 1997). Rather, each application must be decided on its own facts. See *Hodge*, 802 F.2d at 61.

### DISCUSSION

In the Motion under 28 U.S.C. § 2255 to Vacate his conviction, Movant argues his conviction and sentence must be vacated based on the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). Movant has not demonstrated that he is indigent. The Court also cannot determine at this point whether Movant's claim is "likely to be of substance." *Hodge*, 802 F.2d 61-62.

The Court similarly finds that the other *Hodge* factors weigh against granting Movant's application. Movant demonstrates an ability to present his case in his Motion to Vacate.

Additionally, Movant's claim does not involve complex facts or conflicting evidence implicating the need for expert investigation or cross examination. In this case, representation would not "lead to a quicker and more just result by sharpening the issues and shaping examination."

*Hodge*, 802 F.2d at 61.

### CONCLUSION

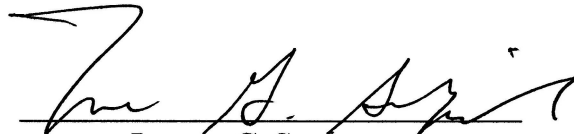
For the foregoing reasons, Movant's request for the Court to appoint counsel is denied. Denial of Movant's request is without prejudice to Movant's renewed application later in the case.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully requested to mail this Order to pro se Movant.

SO ORDERED.

Dated: May 29, 2020  
New York, New York



LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE